IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2175 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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NARESHBHAI @ NATUBHAI PUNJABHAI RAULJI
Versus
THE STATE OF GUJARAT

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Appearance :
MR MB MASARIA for the Appellant
MR HL JANI, ADDITIONAL PUBLIC PROSECUTOR for the Opponent

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 14/02/2007

ORAL JUDGMENT

1. The appellant – original accused in Sessions Case No.157 of 2006 is before this Court being aggrieved by judgment and order dated 30.09.2006 passed by the learned Additional Sessions Judge, 3rd Fast Track Court, Anand, convicting the accused for an offence under Section 376

of the Indian Penal Code (“IPC”, for short) and awarding 1 year's S.I., fine of Rs.500/- and in default, 1 month's S.I.

The appellant – accused was charged with offence under Sections 363, 366 and 376 of IPC. The learned Additional Sessions Judge was pleased to acquit the accused for offence under Sections 363 and 366 of IPC.

2. Mr.M.B.Masaria, learned Advocate for the appellant invited attention of the Court to paragraph No.22 of the judgment and order of the learned Additional Sessions Judge, wherein the learned Judge has discussed in detail the age aspect of the victim.

Learned Advocate for the appellant also invited attention of the Court to paragraph No.27 of the judgment and order, wherein the learned Judge has recorded that:

> “The accused and the victim have married. The marriage has taken place according to Hindu rituals. They have become husband and wife. Not only that, said marriage is also registered. The Investigating Officer has also deposed and stated that in his investigation, it has come on record that both have got legally married, as they both have a love affair. In view of the aforesaid facts, it is on record that the victim and the accused are husband and wife. After the victim left her house, they have lawfully married and it is on record that the

victim of her own will, had left the house of her parents, as she was having a love affair with the accused. The victim had left the house because her father was proposing her engagement at some other place, which was not liked by her. It is on record that immediately after the incident, the victim and the accused got legally married and they are blessed with a child out of that wedlock."

The learned Additional Sessions Judge has then discussed Section 376 of IPC, with due emphasis on occurance of the offence between husband and wife particularly when the wife is not below the age of 12 years.

The learned Additional Sessions Judge taking into consideration the aforesaid aspect, imposed the sentence of 1 year's S.I.

3. Taking into consideration the aforesaid facts and the decision cited by learned Advocate Mr.Masaria in the matter of **GOURI SHANKAR SAHU VS. STATE OF JHARKHAND AND ANOTHER**, reported in 2006 CRI.L.J. (NOC) 593 (JHAR.) = 2006 (3) AIR Jhar R 180, in support of his submissions, the conviction is sustained, but the sentence is modified to the period undergone. The appeal is partly allowed.

(RAVI R.TRIPATHI, J.)

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